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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,020	12/12/2003	Jeffrey Dale Wilson	03WIL2	2470
7590	09/12/2006		EXAMINER	
Patent Law Office P.O. Box 91929 Santa Barbara, CA 93190-1929			CARIASO, ALAN B	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/735,020	Applicant(s) WILSON ET AL.	
	Examiner Alan Cariaso	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5, 7 and 8 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 14, 2006 has been entered. Claims 3-8 are pending.
2. The indicated allowability of claims 3-8 is withdrawn in view of the newly discovered reference(s) to WU et al (US 6,035,540) and NG et al (US 6,792,685 B1), and reconsideration of enablement regarding claim 7. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 7 recites "wherein said ferromagnetic or magnetic second material is movably

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mounted to said housing and adjustable towards and away from said magnetic or ferromagnetic first material". It is noted that applicant's specification on page summarizes this recitation on page 4, lines 8-10, but further description on page 8 regarding ferromagnetic materials (90,92) lack enablement as to how ferromagnetic second material (90) is movable and adjustable towards and away the ferromagnetic first material (92), given that ferromagnetic material (90) disposed in the housing appears to be limited by the adjacent wall (fig.2) and battery (16) of the housing.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by WU et al (US 6,035,540).

7. WU discloses a laser pointer (1-8, figs.1 & 5) operable for providing a laser beam (fig.5) in a direction (P,V,H) defining a longitudinal axis (P or V or H), the laser comprising: (a) a housing (base1, frame 3, cover 9), (b) a laser module (any or all of laser illuminators 6, 7 & 8) enclosed within the housing (1,3,9, fig.1), (c) a power supply (batteries 26) enclosed within the housing (1,3,9) and in electrical communication (via conductors 261-268, fig.3) with the laser module (6-8, col.2, lines 55-65), (d) a counterweight (plumb weight 41) rigidly attached to the laser module (6-8) by a bridge

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(pendulating stem 42), the laser module (6-8), counterweight (41) and bridge (42) collectively forming an inertial mass (plumb device 4) have a center of gravity disposed on the bridge (col.3, lines 8-17), (e) a gimbal (horizontality calibrator 5, figs.1-4) affixed to the housing (1,3,9) and the bridge (42) at the center of gravity (col.4, lines 8-18) of the inertial mass (4), the gimbal (5) pivoting on two intersecting and mutually perpendicular axes (521 & 541, fig.2, col.3, lines 18-29 and lines 46-64), and means (weight 41 and dampening boxes 522,524, col.3, lines 46-64) for biasing the gimbal-mounted inertial mass (4) to a neutral position with respect to the housing (1,3,9), the biasing means (41,522,524) being operable and capable of damping angular vibration (given use of damping fluid and damping beads, col.3, lines 50-51 & 59-60) between the inertial mass (4) and the housing (1,3,9) while enabling the laser pointer to be panned (with driving means 2); wherein the counterweight (41) is adjustable (either by adjusting screws 534 and inner ring 53 (col.4, lines 6-18) or by threaded coupling as shown in fig.3, between external threads of stem 42, internal threads of weight 41 and screw bore 411) towards and away from the mutually perpendicular pivot axes (521,541, fig.2) of the gimbal (5).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over WU et al (US 6,035,540) in view of NG et al (US 6,792,685 B1).

10. WU discloses the claimed invention including range limiting means of claim 8 operable for limiting the range of angular motion of the inertial mass (4) provided either by (a) enclosing cylindrical housing wall (34) of frame (3) against perimeter contact of swinging counterweight (41) or (b) adjustment of gravity center of plumb device (4) by adjustment of inner ring (53, col.4, lines 13-18). However, WU does not disclose the means for biasing the inertial mass to a neutral position employs a magnetic field interaction between a magnetic or ferromagnetic first material disposed on the inertial mass and a ferromagnetic or magnetic second material affixed to the housing.

11. NG teaches an alternative damped bearing assembly (22', figs.4D & 4E, col.4, lines 53-59) including a magnetic or ferromagnetic first material (shaft 62', col.4, lines 55-56) disposed on the pointer assembly (12, fig.1) that includes at least one laser (40,42, col.4, lines 60+) with plumb (10,12,14,16,18, fig.1, 54 fig.3) that integrally makes up an inertial mass and a ferromagnetic or magnetic second material (permanent magnets 68', col.4, lines 54-55) affixed to the support (34, figs.1, 4D & 4E, col.3, lines 23-25) by bearing assembly 22', equivalent to fluid-containing bearing assembly (figs. 4A-4C, col.4, lines 41-52), for the purpose of resisting tilting of frames (24,26) with respect to neutral position (figs.7A,7B) by bearing friction (col.4, lines 34-40).

12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the laser pointer device of WU et al to include the type of dampening bearing assembly that includes ferromagnetic or magnetic materials as

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taught by NG et al in order to resist tilting of the plumb-pendulum assembly upon resetting a neutral position on a desired new reference surface being aligned on which the laser pointer device is positioned. The magnetic dampening and fluid dampening being alternative equivalents in providing friction against swinging of the plumb device relative the neutral position.

Allowable Subject Matter

13. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record teaches an electrically conductive material disposed between the magnetic or ferromagnetic first material and the magnetic or ferromagnetic second material.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. TAMAMURA (US 6,691,420 B2), RANDO (US 6,009,630) and BORKOVITZ (US 4,993,161) show laser beam level devices with gimbal or angular support of laser-plumb or pendulum, it's angular motion limited or dampened by magnets or coils (36,46 in TAMAMURA; 144-fig.14 in RANDO; and 30,32 in BORKOVITZ). RANDO '630 further teaches magnets 144 dampen pendulum motion by

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Eddy current damping (col.7, lines 28-29). COSTA et al (US 5,537,205) shows a battery powered laser beam unit (12) at one end of bridge-like support body (14, 28) and a plumb bob counterweight (30) at the opposite end, the body (14,28) being supported by gimbal ring assembly (16).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 2, 2006
AC

Alan Cariaso
Primary Examiner
Art Unit 2875

